

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 MITCHELL KEITH GOODRUM,

4 Plaintiff,

5 v.

6 CHARLES WOODMAN LAW FIRM,
7 et al.,

8 Defendants.

3:20-cv-00573-MMD-CLB

REPORT AND RECOMMENDATION
OF U.S. MAGISTRATE JUDGE¹

9 Before the court is Plaintiff Mitchell Goodrum's ("Goodrum"), application to proceed
10 *in forma pauperis* (ECF No. 1), his motion for appointment of counsel (ECF No. 1-2), and
11 his amended *pro se* civil rights complaint² (ECF No. 3). For the reasons stated below, the
12 court recommends that Goodrum's *in forma pauperis* application (ECF No. 1) be granted,
13 his motion for appointment of counsel (ECF No. 1-2) be denied as moot, and his amended
14 complaint (ECF No. 3) be dismissed without prejudice and without leave to amend.

15 **I. *IN FORMA PAUPERIS* APPLICATION**

16 A person may be granted permission to proceed *in forma pauperis* ("IFP") if the
17 person "submits an affidavit that includes a statement of all assets such [person] possesses
18 [and] that the person is unable pay such fees or give security therefore. Such affidavit shall
19 state the nature of the action, defense or appeal and affiant's belief that the person is entitled
20 to redress." 28 U.S.C. § 1915(a)(1); *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000)
21 (en banc) (stating 28 U.S.C. § 1915 applies to all actions filed IFP, not just prisoner actions).

22 The Local Rules of Practice for the District of Nevada provide: "Any person who is
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24 ¹ This Report and Recommendation is made to the Honorable Miranda M. Du, United
25 States District Judge. The action was referred to the undersigned Magistrate Judge pursuant
26 to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4.

27 ² The court finds the amended complaint (ECF No. 3) to be the operative complaint in
this case.

1 unable to prepay the fees in a civil case may apply to the court for authority to proceed [IFP].
 2 The application must be made on the form provided by the court and must include a financial
 3 affidavit disclosing the applicant's income, assets, expenses, and liabilities." LSR 1-1.

4 "[T]he supporting affidavit [must] state the facts as to [the] affiant's poverty with some
 5 particularity, definiteness and certainty." *U.S. v. McQuade*, 647 F.2d 938, 940 (9th Cir.
 6 1981) (quotation marks and citation omitted). A litigant need not "be absolutely destitute to
 7 enjoy the benefits of the statute." *Adkins v. E.I. Du Pont de Nemours & Co.*, 335 U.S. 331,
 8 339 (1948).

9 A review of the application to proceed IFP reveals Goodrum cannot pay the filing fee;
 10 therefore, the court recommends that the application (ECF No. 1) be granted.

11 **II. SCREENING STANDARD**

12 Inmate civil rights complaints are governed by 28 U.S.C. § 1915A. Section 1915A
 13 provides, in relevant part, that "the court shall dismiss the case at any time if the court
 14 determines that . . . the action or appeal (i) is frivolous or malicious; (ii) fails to state a claim
 15 upon which relief may be granted; or (iii) seeks monetary relief against a defendant who is
 16 immune from such relief." 28 U.S.C. § 1915A(b). A complaint is frivolous when "it lacks an
 17 arguable basis in either law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). This
 18 includes claims based on legal conclusions that are untenable (e.g., claims against
 19 defendants who are immune from suit or claims of infringement of a legal interest which
 20 clearly does not exist), as well as claims based on fanciful factual allegations (e.g.,
 21 delusional scenarios). *Id.* at 327–28; *see also McKeever v. Block*, 932 F.2d 795, 798 (9th
 22 Cir. 1991). Dismissal for failure to state a claim under § 1915A incorporates the same
 23 standard applied in the context of a motion to dismiss under Federal Rule of Civil Procedure
 24 12(b)(6), *Wilhelm v. Rotman*, 680 F.3d 1113, 1122 (9th Cir. 2012), which requires dismissal
 25 where the complaint fails to "state a claim for relief that is plausible on its face," *Bell Atl.*
 26 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

27 The complaint is construed in a light most favorable to the plaintiff. *Chubb Custom*

1 *Ins. Co. v. Space Systems/Loral Inc.*, 710 F.3d 946, 956 (9th Cir. 2013). The court must
 2 accept as true all well-pled factual allegations, set aside legal conclusions, and verify that
 3 the factual allegations state a plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 679
 4 (2009). The complaint need not contain detailed factual allegations, but must offer more
 5 than “a formulaic recitation of the elements of a cause of action” and “raise a right to relief
 6 above a speculative level.” *Twombly*, 550 U.S. at 555. Particular care is taken in reviewing
 7 the pleadings of a *pro se* party, for a more forgiving standard applies to litigants not
 8 represented by counsel. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010). Still, a liberal
 9 construction may not be used to supply an essential element of the claim not initially pled.
 10 *Pena v. Gardner*, 976 F.2d 469, 471 (9th Cir. 1992). If dismissal is appropriate, a *pro se*
 11 plaintiff should be given leave to amend the complaint and notice of its deficiencies, unless
 12 it is clear that those deficiencies cannot be cured. *Cato v. United States*, 70 F.3d 1103,
 13 1107 (9th Cir. 1995).

14 **III. SCREENING OF AMENDED COMPLAINT**

15 In his amended complaint, Goodrum sues Defendants Charles Woodman Law Firm,
 16 Charles Woodman, and Peter Smith under 42 U.S.C. § 1983. (See ECF No. 3.) The
 17 amended complaint relates to Goodrum’s underlying state criminal case. (*Id.*) Goodrum
 18 alleges that the Defendants, who were the criminal defense attorneys (Woodman and Smith)
 19 assigned to his case, made a number of errors in his criminal case and appeal. (*Id.*)
 20 Goodrum seeks a reversal of his conviction, release from custody, a declaration that
 21 Woodman violated Goodrum’s rights and that Woodman provided ineffective legal
 22 assistance, and \$1.5 million in damages. (*Id.* at 21.)

23 42 U.S.C. § 1983 aims “to deter state actors from using the badge of their authority
 24 to deprive individuals of their federally guaranteed rights.” *Anderson v. Warner*, 451 F.3d
 25 1063, 1067 (9th Cir. 2006) (quoting *McDade v. West*, 223 F.3d 1135, 1139 (9th Cir. 2000)).
 26 The statute “provides a federal cause of action against any person who, acting under color
 27 of state law, deprives another of his federal rights[.]” *Conn v. Gabbert*, 526 U.S. 286, 290

1 (1999), and is “merely . . . the procedural device for enforcing substantive provisions of the
2 Constitution and federal statutes.” *Crompton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991).
3 Claims under § 1983 require the plaintiff to allege (1) the violation of a federally-protected
4 right by (2) a person or official who acts under the color of state law. *Anderson*, 451 F.3d at
5 1067.

6 However, § 1983 is not a backdoor through which a federal court may overturn a
7 state court conviction or award relief related to the fact or duration of a sentence. Section
8 1983 and “the federal habeas corpus statute . . . both provide access to the federal courts
9 ‘for claims of unconstitutional treatment at the hands of state officials, . . . [but] they different
10 in their scope and operation.’” *Ramirez v. Galaza*, 334 F.3d 850, 854 (9th Cir. 2003) (quoting
11 *Heck v. Humphrey*, 512 U.S. 477, 48 (1994)). Federal courts must take care to prevent
12 prisoners from relying on § 1983 to subvert the differing procedural requirements of *habeas*
13 *corpus* proceedings under 28 U.S.C. § 2254. *Heck*, 512 U.S. at 486-87; *Simpson v.*
14 *Thomas*, 528 F.3d 685, 695 (9th Cir. 2008). When a prisoner challenges the legality or
15 duration of his custody, raises a constitutional challenge which could entitle him to an earlier
16 release, or seeks damages for purported deficiencies in his state court criminal case, which
17 effected a conviction or lengthier sentence, his sole federal remedy is a writ of *habeas*
18 *corpus*. *Edwards v. Balisok*, 520 U.S. 641, 648 (1997); *Heck*, 512 U.S. at 481; *Wolf v.*
19 *McDonnell*, 418 U.S. 539, 554 (1974); *Preiser v. Rodriguez*, 411 U.S. 475 (1973); *Simpson*,
20 528 F.3d at 692-93. Stated differently, where “a judgment in favor of the plaintiff would
21 necessarily imply the invalidity of his conviction or sentence,” then “the complaint must be
22 dismissed unless the plaintiff can demonstrate that the conviction or sentence has already
23 been invalidated.” *Heck*, 512 U.S. at 487.

24 It appears that Goodrum is challenging the constitutionality of his state court criminal
25 conviction. Consequently, he must demonstrate that his conviction has been overturned to
26 proceed in an action under § 1983. As he has not done so, his sole relief is a *habeas corpus*
27 action. The court, therefore, recommends that the amended complaint be dismissed without

1 prejudice and without leave to amend.

2 Additionally, the court notes that a criminal defense attorney, (such as Defendants
3 Woodman and Smith), does not act under the color of law when representing criminal
4 defendants because he is not acting on behalf of the government; rather, he is the
5 government's adversary. *Cf. Polk Cnty. v. Dodson*, 454 U.S. 312, 323 n.13 (1981) (a public
6 defender "does not act under color of state law when performing a lawyer's traditional
7 function as counsel" to a criminal defendant). Thus, Goodrum cannot state a colorable claim
8 for relief because Defendants are not state actors for purposes of § 1983.

9 In light of this Report and Recommendation, the court recommends that Goodrum's
10 motion for appointment of counsel (ECF No. 1-2) be denied as moot.

11 **IV. CONCLUSION**

12 For the reasons articulated above, the court recommends that Goodrum's application
13 to proceed *in forma pauperis* (ECF No. 1) be granted, his motion for appointment of counsel
14 (ECF No. 1-2) be denied as moot, and his amended complaint (ECF No. 3) be dismissed
15 without prejudice and without leave to amend.

16 The parties are advised:

17 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of
18 Practice, the parties may file specific written objections to this Report and Recommendation
19 within fourteen days of receipt. These objections should be entitled "Objections to
20 Magistrate Judge's Report and Recommendation" and should be accompanied by points
21 and authorities for consideration by the District Court.

22 2. This Report and Recommendation is not an appealable order and any notice
23 of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the District
24 Court's judgment.

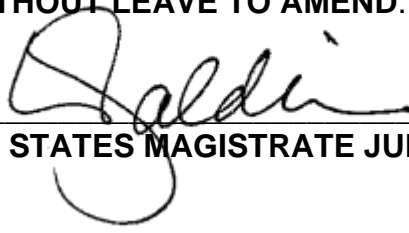
25 **V. RECOMMENDATION**

26 **IT IS THEREFORE RECOMMENDED** that Goodrum's application to proceed *in*
27 *forma pauperis* (ECF No. 1) be **GRANTED**;

1 **IT IS FURTHER RECOMMENDED** that Goodrum's motion for appointment of
2 counsel (ECF No. 1-2) be **DENIED as moot**, and,

3 **IT IS FURTHER RECOMMENDED** that Goodrum's amended complaint (ECF No. 3)
4 be **DISMISSED WITHOUT PREJUDICE AND WITHOUT LEAVE TO AMEND**.

5 **DATED:** October 19, 2020.

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UNITED STATES MAGISTRATE JUDGE